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# ***MASTER OF MILITARY STUDIES***

## ***Outsourcing: Reforms Imperative to Restoring Military Capabilities***

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## Preface

As a Navy Supply Corps Officer and having held a Level II contracting warrant, I have been fascinated with the concept of hiring contractors for battlefield support. I was educated through the Defense Acquisition pipeline for Contracting in which I learned the basic fundamentals of the profession. I took part in an base reduction and closure (BRAC) study with the Marine Corps while stationed at Marine Corps Base Hawaii, Kaneohe Bay from 2001-2004 where the initiative to identify and convert non-inherently governmental positions impacted the entire installation. Today the issue of outsourcing seems to have come full circle. The pendulum of outsourcing to the private sector has swung too far. In our efforts to become more efficient and cost effective we have rendered the Military dependant on contractors. Without the ability to outsource, the military would reach a culmination point. The fundamentals that I studied in Contracting 101 emphasized the restriction on outsourcing inherently governmental functions which appears to be directly contrary to many of the outsourcing practices of today. Clearly many, of the outsourced functions in Iraq and Afghanistan have crossed that line.

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## EXECUTIVE SUMMARY

**Title:** Outsourcing: Reforms Imperative to Restoring Military Capabilities

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**Thesis:** Overreliance on outsourcing Department of Defense (DoD) functions to private contractors is undermining the organic strength and capabilities of the United States military.

**Discussion:** Since the end of the Cold War there has been a steady rise in the use of private business organizations to accomplish missions and duties typically assigned to the military. The tremendous expansion of contractors on the battlefield in highly critical operational areas is a trend that is escalating across the DoD. Contractors, in unprecedented numbers have expanded their role from supporting CONUS missions to embarking on the battlefield in defense of our nation. As this trend continues to expand within the DoD, and as contractors' roles broaden in scope and become blurred with Military missions, it is imperative that the DoD reevaluate those services that are suitable for outsourcing and that critical improvements are made to the contracting process and oversight for such services. This study focuses primarily on identifying the mounting issues related to DoD outsourcing and addresses potential solutions to mitigate the negative effects.

**Conclusion(s) or Recommendations:** Department of Defense outsourcing must become more transparent to the tax payers. An assessment of all DoD contracts is necessary to determine which inherently governmental functions are being performed by contractors. Those critical functions must be retained by the government and made ineligible for future outsourcing. Contractor immunity abroad has had a devastating effect on coalition legitimacy. Legal accountability for contractors working abroad must be implemented and enforced. Purported savings from outsourcing must be validated. Lack of immediate and substantial reforms to the outsourcing process and a thorough review of what functions are available for outsourcing, could result in irrevocable damages to the military competency.

**Introduction:**

Overreliance on outsourcing Department of Defense (DoD) functions to private contractors is undermining the organic strength and capabilities of the United States military. The false assumption that most military functions can be done better, faster, cheaper using private contractors to perform the service has created unforeseen problems that threaten the nation's most powerful instrument of power, the military. The strategy of outsourcing as a cost savings initiative has been used to an extent far exceeding the original intention. Lack of immediate and substantial reforms to the outsourcing process and a thorough review of what functions are available for outsourcing, could result in irrevocable damages to the military competency. Excessive outsourcing has profoundly disrupted civil-military balance and questions the very trust and faith that the nation has in its own military.<sup>1</sup>

The estimated 160,000 contractors of all varieties working in Iraq in 2008 equal the number of war fighters employed there.<sup>2</sup> Everything from mundane jobs such as cooking to highly specialized functions such as maintaining and repairing sophisticated weapons systems, translating, transcribing, interrogating prisoners, and providing security is being outsourced.

Even most of the harshest critics of outsourcing are amenable to it to some extent. Most believe that it is suitable for some of the more mundane skills and for logistics support. However, logistics is arguably the most essential war fighting function in determining success or failure of a mission. There is a point beyond which the military must not go, and it must maintain combat service support logistics functions regardless of efficiency or cost in order to sustain the combat mission without reliance on civilian contractors.

DoD has become so overly reliant on private contractors to provide vital skill sets that the military has now foregone these basic and core military functions. Duke University

Professor Scott Silliman who specializes in law, ethics and national security, says it's a matter of great concern that private contractors fill even the most sensitive military roles.<sup>3</sup> Peter Singer of the Brookings Institution says, "We have pushed the envelope of military outsourcing past the point of what anyone contemplated."<sup>4</sup> The military can no longer accomplish a mission without contractors and they will continue to be involved in many conflicts in the future; the ramifications of this fact must be considered.

### **Outsourcing in Need of Reforming:**

The practice of outsourcing tasks traditionally done by the uniformed military has become increasingly prevalent over the past 20 years. It is based on the belief that the notional efficiency of market capitalism can be used by the military. However the military is not a capitalist enterprise and converting the military into a corporate institution degrades its effectiveness as well as the honor of the military profession.<sup>5</sup> The major difference between a government agency and the private sector is revenue. While profit is an easily measurable performance metric that can accurately reflect the strategic success of a company, the success of a government agency is reflected in its ability to accomplish a mission. The financial efficiency remains a priority but not necessarily as an indicator of success. Customer satisfaction is the primary measure of success for the military, in which the ultimate "customer" is also the source of funding, the taxpayer. If the American public feels confident in the capabilities of its military to protect the vital national interests, the cost of that assurance will be justified as long as DoD acts as responsible custodians of tax dollars.<sup>6</sup>

There are some functions that are inherently governmental and that, either by statute or by agency charter, must be done by government workers. Defined in the A76 Circular, "An inherently governmental activity is an activity that is so intimately related to the public interest



as to mandate performance by government personnel.”<sup>7</sup> These activities require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. To support military operations during peacetime or wartime, the Secretary of Defense is authorized to employ civilian contractors if it is financially beneficial and consistent with military operational requirements. Specifically, Title 10, section 129a of the U.S. Code (U.S.C.), grants this authorization to the Secretary of Defense.<sup>8</sup> As the military and private contractors become more indistinguishable in the battle field, the need to reexamine the definition of “inherently governmental” becomes increasingly important.

The employment of contractors has been a part of United States military strategy since the Revolutionary War. In 1781, the Continental Congress decided that contracting with private firms was necessary to provision and outfit the military forces.<sup>9</sup> The transportation of these supplies was also provided under contract by ox teams and drivers. This system alleviated many of the supply difficulties for the remainder of the war. Two years later, General Washington commented that his army’s supply had improved with the contracting system.<sup>10</sup> Until recently however, most U.S. conflicts have been fought overseas and the civilian contractors providing support were physically located in the U.S. and not in the theater of conflict.

The ramifications of introducing thousands of contractors into a war zone were not adequately considered before awarding the scores of contracts that brought about the ensuing challenges. While civilian contractors on the battlefield reduce the overall military manpower requirements, they also place a tremendous liability on the military forces that they are there to support. The U.S. relies upon civilian contractors to provide logistical support to the armed services during and between periods of hostilities. The time between conflicts, in theory at least, is more aptly suited for basic garrison support and has a more realistic potential for achieving the

cost savings goals for which it was intended. However, in hostile environments the parameters for the contractor's involvement dramatically changes which induces cost overruns rather than savings.

To achieve the mandated force structure reductions imposed after the end of the Cold War, the Department of Defense transferred many logistic functions to the reserve forces.<sup>11</sup> This allowed the services to retain higher combat fighting capability that would only need reserve augments for short periods during training evolutions or under presidential recall during a large contingency. This also answered "tooth to tail" concerns within the U.S. Congress in regards to defense spending. However, one consequence of the reduction in force was the employment of contractors to avoid the potential mobilization of large numbers of National Guard and Reserve units so as to support the logistics aspects of the combat mission overseas. The use of contractors allows the reserve component personnel to remain at home and work in their civilian careers, thus not adversely affecting the industrial/commercial base of the economy. This assumed that public opinion does not depreciate as they do not see additional troops deploying and hear about the sacrifices expected of the military members and their families.

The mobilization of the reserve component personnel has some serious potential economic and political drawbacks. To circumvent this, contractors are hired to fill the gap and provide the combat support services required by the combatant commanders. Given the current and projected force structure, logistics support can be severely hampered in any military operation where the National Guard and Reserve forces are not called up to augment active duty troops. The presence of contractors on the battlefield has become a reality of contemporary war. Military operations in the last decade have depended upon the contractors to make logistics

support for contingency operations much faster and much more efficient, not to mention, much more extravagant.

The major tenet purported in support of outsourcing was the considerable cost savings that it would deliver. Non-combat outsourcing has achieved measurable savings through the private sector but there is no evidence that the 160,000 contractors currently employed in theaters of combat operations are yielding a cost savings.<sup>12</sup> In fact it's difficult to put an accurate price tag on contractor fraud. The Government Accountability Office reported that the Defense Department has recovered about \$2 billion since 2001 from all outside contractors and government procurement officials accused of dishonesty or mismanagement.<sup>13</sup>

The U.S. must not allow the search for monetary savings to induce prolonged and damaging, possibly irreparable, changes to the military's core competencies encompassed in fighting and winning the nation's wars. Reducing the size and expense of DoD results in limited options and places too much emphasis on efficiency as a factor in determining the appropriate force structure. More importantly, however, cost-efficiency is irrelevant if the end result detracts from military effectiveness.

Best practices and efficiency developed by private companies have influenced government agencies to consider outsourcing some activities to private contractors in order to improve operational effectiveness and efficiency. Despite steady momentum in the trend of outsourcing, the tangible benefits to DoD have yet to be proven. The assumed cost savings and supposed superior performance from private contractors is not as clearly significant as anticipated. This appears to be the case even in the private sector. Singer reports that a Deloitte and Touché survey conducted of some 1500 chief executives in private industry who outsourced their own corporate services revealed that only 31 percent perceived that outsourcing had created

significant savings.<sup>14</sup> Furthermore, of the 1500 CEOs, 69 percent were disappointed in the overall outsourcing results.<sup>15</sup> In the public sector, RAND reported that the private provision of the U.S. military's Professional Military Education programs found no cost savings, while the Government Accounting Office found that \$6 billion in supposed savings, due to the first wave of outsourcing within DoD, were overstated by as much as 75 percent.<sup>16</sup> DoD has established policy to outsource a significant cross section of the military without verification of the presumed benefits. This lack of corroboration is in itself, a failure to apply smart business practices.

In many instances, the actual costs of a service contract (especially those performed overseas in a hostile environment) are difficult to project. The contractor's estimated costs often increase as a result of evolving circumstances or because of poor initial estimates. In fact the costs are so unpredictable that most contingency contracts are funded on a cost plus basis. There are various types of cost plus contracts that fall into a broader category of cost-reimbursable contracts. This type of contract is extremely advantageous to the contractor as it minimizes contractor risk and obligates the government to foot the bill for additional cost burdens incurred by the contractor for such things as added security. The government pays all allowable, allocable and reasonable costs incurred on the contract, while the contractor promises to put forth their best effort.<sup>17</sup>

Outsourcing military functions to private contractors in a combat theater introduces a litany of problems and challenges. There are no assurances that a company's intentions are completely aligned with the government's objectives. In fact, this is almost assured since a company's motivation is profit rather than the goals of the nation. While the nation seeks to use the military instrument of national power to the least extent necessary to accomplish its political

objective, a protracted military engagement has great financial potential for military contractors. There are fundamental, contradictory perspectives of the military commander and the private contractor. Quick decisive victory characterizes the commander's objective while, "mission accomplished" is likely the last thing a private contractor aspires to hear since lucrative DoD contracts supporting combat missions are not awarded or renewed during peacetime.<sup>18</sup>

Differing motivations and perspectives can also contribute to a contractor's unwillingness to undertake actions or risks that a military force would to accomplish the mission. Their loyalty and resolve to perform the terms of the contract are uncertain. With profit maximization as a contractor's primary objective, their interests will not always be in alignment with their client. While human emotions such as fear, apply to a soldier just as indiscriminately as a contractor, service members are compelled to serve for the duration of the assignment because they have taken an oath and are subject to the Uniform Code of Military Justice (UCMJ). Civilian contractors have the prerogative to resign whenever they feel uncomfortable with their working conditions. This can have a destabilizing and erosive effect on the military that are performing similar jobs for less compensation and fewer rights.

Contractors neither take an oath nor are not subject to the UCMJ, except in declared war. Operational commanders do not have authority to exercise direct command over the contractors or to issue punishment for misconduct. The duties of the contractor are expressed in the terms of the contract, and authority over contractors is exercised through the contracting officer who is seldom in the same physical location that the contractor is performing in. There is no guarantee that contractors are going to perform in accordance with the contract. During instances of intense hostilities, numerous private firms delayed, suspended, or concluded their operations, resulting in great stress on coalition forces.<sup>19</sup> In other circumstances, contractor employees

endured even greater risks and dangers than their military equivalents. However, military operations in a combat zone must rely on consistent, predictable and dependable contractor performance results.

Despite having no direct authority over a contractor, the operational commander must react if a contractor or contractor employees are unwilling to enter or stay in the combat zone. Military outsourcing disrupts traditional norms of military command and control. Contractors are living and working in the same area of operations but the only authority that governs them is their civilian employer. The lack of integration and chain of command results in contractors innovating to establish their own private army, complete with communications and intelligence.

In addition to the chain of command challenges facing combatant commanders, contractors cannot be ordered into a hostile environment, even by contract, unless a formal declaration of war has been issued.<sup>20</sup> Since most conflicts today are classified as military operations other than war, technically there is no declaration of war (MOOTW), and a commander's direct authority over contractors operating in his area of responsibility is thus very limited. The contractors are only required to perform the tasks specified in the contract. Failure of a contractor to exercise the terms of the contract could jeopardize the success of the operation and endanger the lives of the military service members.

Combatant commanders must also concern themselves with the legal status of contractors in their area of operations. One military law analyst noted, "Legally speaking, [military contractors] fall into the same grey area as the unlawful combatants detained at Guantánamo Bay."<sup>21</sup> The enemy's perception of a contractor as a potential target is a major operational liability. Most states follow the established laws of war that define combatants, noncombatants, and civilians accompanying the force, and the proper handling of detainees and prisoners.

Provisions of the 1949 Geneva Convention and the 1907 Hague Convention grant contractors on the battlefield a status as "Civilians Accompanying the Force" (CAF), which provide them with certain protection and treatment if captured by enemy forces abiding by the laws of war.<sup>22</sup>

However this is a mute point when the enemies are irregular warriors or terrorists who do not recognize or adhere to laws of war. This ambiguity that characterizes contractor's roles in a combat zone results in dire consequences when they are captured and the enemy is the authority defining their role.

The legal accountability of a private contractor is a major international concern. Contractors have committed felonies that they will never be prosecuted for. The complete lack of accountability for atrocities committed by contractors has had a profoundly adverse and contemptuous effect on the reputation of the coalition forces striving to accomplish the mission, develop trust and restore stability. Retired Army General William Nash, a senior fellow at the Council on Foreign Relations stated, "If you're trying to win hearts and minds, and the contractor is driving 90 miles per hour through the streets and running over kids, that's not helping the image of the American Army. The Iraqis are not going to distinguish between a contractor and a soldier."<sup>23</sup> Instead of focusing all efforts on the mission at hand, valuable resources must be dedicated to quelling the resentment towards the coalition forces as a result of criminal actions of an independent contractor.

The laws that private contractors are subject to are at best, vague. As civilians, contractors are not subject to the UCMJ, they are not subject to Iraq law; the country initially lacked a functioning judiciary and they are not necessarily subject to U.S. law, because their actions take place overseas and many are non-U.S. citizens. Paul Bremer (then the civilian administrator of Iraq) reemphasized the unbridled contractor immunity on June 27, 2004, one

day before leaving Iraq by signing Order 17, which declared, "Contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a contract or any sub-contract thereto."<sup>24</sup>

The only U.S. law that allows prosecution of civilians who commit felony offenses abroad while working for the government is the 2000 Military Extraterritorial Jurisdiction Act (MEJA).<sup>25</sup> While the act does not grant authority for a commander to convene a court martial on civilians, it does grant overseas military commanders authority to charge and incarcerate contractor employees for violation of U.S. Federal laws. However, MEJA has had a negligible effect in holding contractors accountable. US Attorneys have been hesitant to prosecute cases under MEJA due to prosecutor's challenges in collecting evidence from a foreign combat zone. Private contractors implicated in the 2004 Abu Ghraib prison scandal were never prosecuted due to a technicality concerning which federal agency hired them.<sup>26</sup>

Congress recognizes this problematic ambiguity of contractor legal accountability and has attempted to right it by making the UCMJ applicable to contractor actions in a war zone. The Pentagon's 2007 fiscal year budget legislation was surreptitiously amended to apply to "contingency operations."<sup>27</sup> Previous language made contractors subject to the UCMJ only under conditions of declared war. Since the U.S. hasn't declared war since World War II, there is an obvious loophole for current combat operations. According to attorney Scott Horton, an adjunct professor of law at Columbia University, regardless of the contextual change, contractors are still not subject to the UCMJ because the 5<sup>th</sup> and 6<sup>th</sup> Amendments of the Constitution protect U.S. citizens abroad; to a 5<sup>th</sup> Amendment right to a grand jury and the 6<sup>th</sup> Amendment right to a jury trial (neither are provided under the UCMJ).<sup>28</sup> This does not apply to service men and



women who give up some of their constitutional rights when they volunteer to serve in the armed forces.

Another inept attempt to hold contractors accountable is the 2001 USA Patriot Act which granted federal jurisdiction over crimes committed by or against American citizens on certain US government property such as a U.S. embassy. However, the same evidentiary challenges that faced MEJA have impacted the USA Patriot Act; there has been just one successful prosecution of a government contractor under the USA Patriot Act.<sup>29</sup> This persistent lack of well defined laws governing contractor's behavior has resulted in virtual immunity and defaulted contractor discipline to the contractor himself.

The morality of a private contractor employing force on behalf of a state is persistently questioned. Private organizations, particularly in this industry, do not have the same accountability and responsibility that public organizations performing the same tasks do. The contracts that define their performance parameters are largely unavailable to the public for oversight. This shroud of secrecy benefits both the state and the contractor. Utilizing a private company enables the government to achieve strategies that may be publicly unpopular. They are able to execute policy by circumventing public checks and balances. Even more alarming is the potential for a surrogate force to be hired by the government to accomplish foreign policy objectives unrestrained by public approval while the government enjoys being disassociated from the contractor and his means of accomplishing the mission. Ultimately this leads to a lower threshold for using force and diminishes the need to employ diplomatic, information and economic elements of national power to achieve the same goals in non-aggressive, more socially acceptable manner.

The government agency that awards a contract to a private military organization has limited faculty in providing oversight. In fact, there are just 14 personnel (formerly just 5 personnel) overseeing \$118 billion in U.S. reconstruction aid for Iraq, which includes many military or security related functions.<sup>30</sup> In this unregulated industry the contractor can subcontract to whomever they chose without regard to the ethical basis of those decisions. Similar to any industry that has to build up rapidly, some private military contractors have cut corners in their haste to expand capabilities. Some have hired third party nationals with questionable backgrounds. The Financial Times reported, "Rather than give up their guns, many militia leaders and former warlords have simply set up shop as private security contractors, or gone to work for such companies."<sup>31</sup> Recent exposure that civilians are performing sensitive tasks such as interrogations has elicited outrage from the U.S. public and Congress. According to former Marine Corps judge advocate and now law professor at Georgetown University, Gary D. Solis, "This outsourcing thing has gone crazy. You have a lot of people with heavy weaponry answerable to no one."<sup>32</sup>

Unfortunately, all too often, the attitude of DoD is to contract it and forget about it. All service contracts have some oversight and quality assurance built into the contract but it is largely dependent on the contracting officer's representative (COR) assigned to that contract who in many cases, does not hold that role as their sole responsibility. Indicative of oversight inadequacy, Congressional notification of contract award is only mandatory for contracts in excess of \$50 million; most service contracts fall far below this threshold.<sup>33</sup> A capability that is inherently governmental and maintained by DOD is managed and carried out at many more levels of leadership and oversight. While this redundancy may at times be excessive and less cost efficient, the end result is a job done right.

The sheer number of contractors, although still somewhat illusive, is shocking. A 2007 internal Defense Department census identified nearly 180,000 for-hire personnel, from more than 30 countries, working in Iraq alone.<sup>34</sup> Incredibly, these new figures far exceed the number of uniformed military personnel there, even with the surge figures. Private military contractors have suffered more than 1000 deaths and approximately 13,000 wounded so far in Iraq.<sup>35</sup> Precise numbers are unavailable because the Pentagon does not track non-military casualties. However, the estimated casualties of contractors account for more casualties than any single U.S. Army division and more than the rest of the coalition combined.<sup>36</sup> Despite working in direct support of combat missions in Iraq and Afghanistan, these figures have been omitted from the Pentagon's official force numbers reported to the American public. Deliberately skewing these figures, which represent cost and commitment of the war, is reprehensible and adds further credence as to why outsourcing reforms and regulations are absolutely imperative. The opaqueness of outsourcing lends itself, at the very least, to the perception of corruption, deception and potential misuse of tax dollars.

Contemporary DoD outsourcing practices have probably even exceeded President Eisenhower's intent when he set in motion the policy for the U.S. government not to impede business. "In 1955, President Eisenhower said that the federal government would not start or carry out any commercial activity to provide a service or product that can be procured from private enterprise through ordinary business channels. In short, the business of government is not business."<sup>37</sup> There are private security companies performing jobs that clearly fall under the umbrella of military responsibilities and are not available through common business channels such as protecting convoys in a war zone. Exclusive military jobs are outsourced because there simply are not enough troops to accomplish the mission. The well intended initiative to achieve

cost savings by outsourcing all DoD functions that do not absolutely need to be performed by the military, has severely crippled the military's organic ability to perform full spectrum operations unassisted. Even though the job of the U.S. armed services has grown exponentially, the U.S. military force has shrunk by 35 percent since its Cold War high.<sup>38</sup>

Drastic military cutbacks coupled with increasing global commitments have severely stressed the active and reserve components of the U.S. military. The overburdened military has been left with few options but to outsource critical warfare functions to fill the gaps in order to meet every demand. Continued cross service cooperation from the Navy and Air Force in providing individual augments (IA) has been essential in filling critical personnel shortages in the U.S. Army. After nearly five years of conflict in Iraq and Afghanistan and mounting responsibilities, the U.S. Army and Marine Corps have recently announced plans for their respective services to grow. This decision comes at a pivotal time of mounting contractor criticism and scandals. In conjunction with the Army's expansion announcement, U.S. Army secretary, Pete Geren stated that one of the key lessons from the Iraq war is that the proper role of private contractors in a war zone needs to be examined more fully. Noting the controversy that has arisen over accusations against contractors in Iraq, Secretary Geren highlighted that it is an issue that needs closer scrutiny.<sup>39</sup>

Since DoD will likely have to rely on contractors for the foreseeable future, swift reforms must be implemented to mitigate the increasing problems that have manifested. Policymakers must evaluate the economic and political implications of outsourcing before the U.S. invests any more assets in this practice. If they deduce that private firms are advantageous to DoD, Congress and the administration should collaborate both at the international and domestic level to ensure that private contractors are regulated to comply with international law and human rights norms.

Interest in correcting the contractor accountability is not isolated to the U.S. The issue of regulated outsourcing crosses international borders with great fervor. The ultimate solution will require international involvement which is currently under weigh but will likely take years to come to a consensus. In the interim, affected states should generate local standards for working with and regulating private military organizations. The current standard of self-oversight in this industry is reckless, intolerable and has been overlooked for far too long. United Nations Work Group executive president, Mr. José Luís Gómez del Prado said, "An extremely fine line separates contractors from active combat. The outsourcing of military functions (in conflict and post-conflict zones) by transnational companies is leading to the privatization of war." He added: "This new phenomenon raises, to the international community, serious political, legal and human rights problems related to the use of force by non-State actors, as well as the lack of transparency and oversight with which they operate."<sup>40</sup>

With national strategic objectives at stake, the consequence of allowing contractors to self-regulate could be far more grave than merely the industry's demise. Just as joint and coalition doctrine has evolved to facilitate cross-service and international organizations working cooperatively to achieve common objectives, so too must statutes and regulations to establish procedures for interaction with contractors who operate in the same areas of operations and live in the same compounds. Equally lacking is appropriate oversight in government service contracts. To achieve adequate performance from a contractor, the government must invest in and commit to appropriate oversight. The expectation and trust of a contractor to perform in accordance with the terms of the contract has to be verified. It's as simple as the phrase, "expect what you inspect."

U.S. Comptroller General, David Walker commented that, "the definition of an inherently governmental function needs a re-examination because public employees and private-sector contractors are almost indistinguishable."<sup>41</sup> A clear definition delineating the specific tasks that are inherently governmental coupled with enforcement of existing restrictions on what can be outsourced will restore the distinction of service members and contractors. Significant changes regarding private military contractors filling armed roles need to be reconsidered.<sup>42</sup> These and many other currently outsourced functions should be restored as uniquely government functions. According to the old military doctrine on contracting, if a function was "mission-critical" or "emergency-essential," that is, if it could affect the very success or failure of an operation, it was kept within the military itself.<sup>43</sup>

The government has set some very particular and high standards for competition and openness in government contracting. Exceptions and waivers alleviating the mandate for full and open competition exists to streamline the process in justified instances but these should be infrequent occurrences or unanticipated, urgent requirements. Sole-source contract awards have been abused which delegitimizes the process and it ultimately discourages competition. Lack of planning does not justify a sole-source contract award or urgency but often that is the justification. Consistent practice of sole-source contracting contributes to evolution of monopolies which is not a desired outcome of government contracting. Fair and open competition is vital. The contracting process has to be cleaned up, as Representative Carolyn Mahoney, D-New York, has suggested in her proposed Clean Contracting In Iraq Act.<sup>44</sup> Sole-source and no-bid contracting should be prohibited. Long-term contract awards to exclusive contractors should not be tolerated. As the Center for Corporate Policy has suggested, all government contractors, should have to meet minimum standards of good behavior. Companies

with records of repeated violations of the law, corporations that pay their CEOs excessively, and companies that move their headquarters to offshore tax havens and otherwise use offshore subsidiaries to avoid paying their fair share of taxes should be ineligible for taxpayer-funded contracts.<sup>45</sup>

### **Conclusion:**

The first step in improving the outsourcing quandary is to identify the full spectrum of problems. The veil of secrecy that surrounds the private military industry must be lifted. Regardless of the political implications, the public is entitled to information surrounding the outsourcing of DoD. Agencies who have participated in outsourcing should conduct a comprehensive evaluation to identify the full scope of what they have outsourced and what the results have been. Sensitive or classified contracts are understandably covered but at a minimum, the basic numbers involved should be available. Like most other government documents, all current and future contracts involving non-classified activities should be required to be made available to the public upon request. The Pentagon claiming ignorance concerning the number of contractors employed in combat zones and their casualties is deplorable. These figures are vital to calculating the total cost of war especially considering more than half of the effort is being outsourced.

Only those DoD functions that are not inherently governmental and that can be improved and/or render a significant cost savings, should be a candidate for outsourcing. While this should be obvious, it is contrary to current practices. Doug Brooks of the International Peace Operations Association, an industry trade group, commented, "The fact that troops are going to Iraq right now and actually, in 120-degree weather, putting on weight, kind of shows we are doing too much to support."<sup>46</sup> The operation is one of the most lavishly supported ever. It also

may be one of the most inefficient.<sup>47</sup> The sole impetus for outsourcing was to economize spending in order to develop a more business savvy approach for government efficiency. Unfortunately, there has been little follow through to validate the assumed cost savings. The Defense Contract Audit Agency has identified more than \$10 billion in unsupported or questionable costs from battlefield contractors.<sup>48</sup> Contractor fraud detracts from the resources that could be applied to crucial programs for achieving strategic objectives and mission accomplishment.

Business best practices and efficiency principles are not reserved for private industry. DoD can implement these same ideologies to reap the benefits without outsourcing entire capabilities. Process improvements such as Lean Six Sigma are being implemented across DoD to become more efficient. Military organizations will never be as cost effective as private industry, nor should they be expected to be. The service they deliver to their clients (taxpayers) has no margin for default. Redundancies and the costs that they incur are vital to continued success.

Addressing legal accountability for government contractors working abroad is long overdue and demands immediate attention. Mounting contractor scandals have exposed the gaping holes in accountability. Private security contractor, Blackwater, has been at the center of the controversy since guards employed by the company, shot and killed 17 Iraqi civilians in a Baghdad traffic circle on September 16, 2007.<sup>49</sup> Blackwater founder and former Navy Seal, Erik Prince hit the essence of the problem when he stated, "there's only so much he can do" in response to pressures about who can hold his growing empire accountable.<sup>50</sup> It is the responsibility of the Pentagon and the Justice Department to enforce criminal infractions. Laws should be written to establish who can work for these companies, who the firms can work for,



and who will investigate, prosecute, and punish any wrongdoing by contractors. Any company entering into a military contract with the U.S. government should be amenable to having its overseas operations governed by U.S. law, and that it will subject itself to the jurisdiction of U.S. courts to resolve disputes over alleged abuses committed by its employees.<sup>51</sup>

The very future of the military is in jeopardy as a result of the excessive outsourcing of its capabilities. The uniqueness of the military occupation is being infringed upon by private security firms vying to win lucrative government contracts. The traditional armed forces are no longer the only armed forces. The monopoly on the military profession is being fiercely contested. Private companies are profiting from public investment when they recruit employees with critical skills from directly within the ranks of the active military. Service members from every branch and special force are separating from the military to join these contractors where they are compensated up to 10 times that which they were making on active duty. Soldiers serving alongside contractors are rewarded with less pay while serving in the same battle space and being held to higher standards, this does not bode well for morale.<sup>52</sup>

The issue is outsourcing the time-honored functions of a state. It is about the establishment of new norms with private entities implementing the national military policy of the U.S. Outsourcing policy-implementing mechanisms dilutes national military policy via usage of a private contractor, an agent that has wholly different motivations from those of a military force and an agent twice removed from the legislative branch providing the funding. While contractors are carrying out valuable roles, their overall effect has been to undermine the Iraq mission and the wider fight against terrorism. Worst of all, we have outsourced the most important core function of our government: to fight and win the nation's wars.<sup>53</sup> The U.S. military must contemplate current outsourcing practices and consider the implications to the

longevity of the organization. With regard to national security concerns, parameters must be defined regarding which roles and functions should be kept in government hands. Leading counterinsurgency expert Army Col. Peter Mansoor noted in January 2007, "if they push traffic off the roads or if they shoot up a car that looks suspicious, whatever it may be, they may be operating within their contract — to the detriment of the mission, which is to bring the people over to your side. I would much rather see basically all armed entities in a counterinsurgency operation fall under a military chain of command."<sup>54</sup>

This persistent policy shift towards outsourcing has deceptively lulled the American public into a false sense of military might. By augmenting the requisite war fighting functions that are no longer inherent to the military, DoD has thus far, evaded the ominous culmination point. In doing so, it has portrayed a rosy picture of capability and efficiency that is really nothing more than a façade. While effectively supplementing critical military shortages, outsourcing has merely camouflaged the critical issue of military atrophy. This has hindered acknowledgement of disproportionate downsizing of military forces since the end of the Cold War. During a politically unpopular war on two fronts, it is difficult for the services to meet recruiting and retention goals. Debate of expanding the military to appropriate manning levels or broaching the topic of conscription meets serious political strife. It is hard to convince a nation, whose military comprises less than one percent of the population, of its investment value. If current outsourcing practices are continued unchecked, the military instrument of national power will inevitably suffer the consequences that may jeopardize its superiority and its very ability to fight and win America's wars.

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